

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Defendants-Appellees.

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

ORDER

Lois Davis, a Tennessee resident proceeding pro se, appeals a district court order dismissing her complaint filed under the Employment Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001 et seq. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Represented by counsel, on July 20, 2007, Davis filed a complaint in the United States District Court for the Eastern District of Tennessee, seeking additional long-term disability benefits under an employee welfare benefit plan sponsored by her former employer, Plateau Mental Health Center. Named as defendants are Plateau Mental Health Center; The Plateau Mental Health Center Disability Plan; the Plan's administrator and sponsor, Evelyn O. Moore; and the Plan's insurer, Phoenix American Life Insurance Company. With the exception of Phoenix American, executed

No. 10-5941

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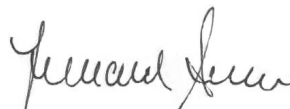
summonses were not filed with respect to any defendant. Phoenix American filed an answer to the complaint on October 16, 2007.

After the complaint was filed, Davis's counsel did not take any action in the case until July 24, 2008, when a pleading styled "Suggestion of Death of Co-Counsel for Plaintiff and Motion for Remaining Counsel to Withdraw Appearance" was filed. Counsel for Davis, Norbert J. Slovis, had died on April 18, 2008. The district court granted the motion in an order filed July 25, 2008. Davis filed a notice on August 18, 2008, that she would be proceeding with this case and was in the process of retaining an attorney. However, neither she nor any counsel took any further action for the next twenty-one months.

On May 19, 2010, the district court issued an order to show cause why the case should not be dismissed for want of prosecution. In response, Davis asserted that she "tried to hire a lawyer" several times but no one would take her case. She asserted that on one occasion, a prospective attorney "kept the file for about a year and decided that she could not take the case." She also indicated that she was "totally disabled," was living on her social security benefits, and "can not hire anyone straight out" to represent her. She requested "guidance [from the court] as [she] can not find an attorney to take this case and [is] totally disabled and ha[s] been for nine years," and asked the court, "What are my options?" The district court construed Davis's response to the show cause order as a request for the appointment of counsel and referred it to a magistrate judge, who denied the request for counsel. After the magistrate judge denied the motion for counsel, the court dismissed the case for want of prosecution under Federal Rule of Civil Procedure 41(b). The court found that there was a "clear record of delay on the part of [Davis], as indicated by the timeline of events set forth at the beginning [of the district court's order of dismissal.]" The dismissal was "without prejudice to re-file."

Judgment affirmed.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Keruan Lee", is written over the printed name "Keruan Lee".

Clerk

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Leonard Green
Clerk

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Filed: June 09, 2011

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Re: Case No. 10-5941 , *Lois Davis v. Plateau Mental Health Center, et al*
Originating Case No. : 07-00277

Dear Sir or Madam,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Julie Brock
Case Manager
Direct Dial No. 513-564-7036

cc: Ms. Patricia L. McNutt

Enclosure

Mandate to issue